

United States District Court
Central District of California

DANIEL ALVAREZ,

Plaintiff,

v.

LOS ANGELES COUNTY et al.,

Defendants.

Case № 2:24-cv-01035-ODW (MARx)

**ORDER GRANTING
DEFENDANT’S SPECIAL MOTION
TO STRIKE, OR, IN THE
ALTERNATIVE, DISMISS THE
FIRST AMENDED COMPLAINT
[31]**

I. INTRODUCTION

Plaintiff Daniel Alvarez brings this action against Defendants Los Angeles County (the “County”), Los Angeles County Children and Family Services (“LACFS”), and Catie Reay. (First Am. Compl. (“FAC”), ECF No. 28.) Reay moves to strike the First Amended Complaint as asserted against her in its entirety pursuant to California’s anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, or, in the alternative, to dismiss each cause of action asserted against her pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). (Mot. Strike & Dismiss (“Motion” or “Mot.”), ECF No. 31.) For the following reasons, the Court **GRANTS** the Motion.¹

¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND²

Alvarez, a Hispanic homosexual male, holds a foster parent license issued by LACFS. (FAC ¶¶ 14, 16.) In 2023, Alvarez became the foster parent of a Caucasian baby boy. (*Id.* ¶ 15.) Excited to share his new journey into fatherhood, Alvarez posted videos of himself with his foster baby on the social media platform TikTok. (*Id.* ¶¶ 18–19.) Although Alvarez would sometimes post videos that were “a little more risqué,” his foster baby never appeared in these videos. (*Id.* ¶ 20.)

Reay, who has never met Alvarez and does not know Alvarez personally, is a TikTok user who came across Alvarez’s TikTok videos. (*Id.* ¶¶ 21–24.) Reay did not like Alvarez’s “risqué” videos or his videos with his foster baby. (*Id.* ¶¶ 25–26.) To express her distain, Reay reposted Alvarez’s TikTok videos on her own TikTok account and added commentary “demonizing” Alvarez’s relationship with his foster baby and stating that she feared for the baby’s safety. (*Id.* ¶¶ 27–28.) After Reay’s TikTok videos went “viral,” she called on her viewers to contact social services regarding Alvarez’s relationship with his foster baby. (*Id.* ¶¶ 29–31.)

Reay’s videos and the phone calls from her viewers prompted an investigation into Alvarez’s parenthood and the safety of his foster baby. (*Id.* ¶¶ 32, 34.) On or about September 22, 2023, West Hollywood Sheriff and Social Services, on behalf of LACFS, arrived at Alvarez’s home, revoked his foster parent license, and removed the foster baby from his custody. (*Id.* ¶¶ 36–37.) Alvarez was not provided a hearing before LACFS revoked his foster parent license and removed the foster baby from his care. (*Id.* ¶¶ 40–41.)

Based on the above allegations, Alvarez initiated this action against the County, LACFS, and Reay. (Compl., ECF No. 1.) Alvarez asserts nine causes of action: (1) defamation against Reay; (2) violation of the Fifth Amendment’s Due Process Clause against the County and LACFS; (3) violation of the Fourteenth Amendment’s

² All factual references derive from the First Amended Complaint or attached exhibits, unless otherwise noted, and well-pleaded factual allegations are accepted as true for purposes of this Motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 Equal Protection Clause against all Defendants; (4) violation of the First
2 Amendment's Right to Free Speech against all Defendants; (5) invasion of privacy
3 against the County and LACFS; (6) intentional infliction of emotional distress against
4 all Defendants; (7) negligence against all Defendants; (8) negligent infliction of
5 emotional distress against all Defendants; and (9) violation of Welfare and Institutions
6 Code section 366.26(n) against the County and LACFS. (FAC ¶¶ 42–204.)

7 Reay moves to strike the First Amended Complaint under California's
8 anti-SLAPP Statute or, in the alternative, to dismiss all claims asserted against her
9 under Rule 12(b)(6). (Mot. 2.) The Motion is fully briefed. (Opp'n, ECF No. 35;
10 Reply, ECF No. 36.)

11 III. LEGAL STANDARD

12 California's anti-SLAPP statute is the frontline defense against lawsuits that
13 "masquerade as ordinary lawsuits but are brought to deter common citizens from
14 exercising their political or legal rights or to punish them for doing so." *Hilton v.*
15 *Hallmark Cards*, 599 F.3d 894, 902 (9th Cir. 2010). SLAPPs—strategic lawsuits
16 against public participation—"are brought to obtain an economic advantage over the
17 defendant, not to vindicate a legally cognizable right of the plaintiff." *Kajima Eng'g*
18 *and Constr., Inc. v. City of Los Angeles*, 95 Cal. App. 4th 921, 927 (2002). "SLAPP
19 plaintiffs do not intend to win their suits; rather, they are filed solely for delay and
20 distraction, and to punish activists by imposing litigation costs on them for exercising
21 their constitutional right to speak and petition the government for redress of
22 grievances." *Id.* (internal citations omitted).

23 California's anti-SLAPP statute states,

24 A cause of action against a person arising from any act of that person in
25 furtherance of the person's right of petition or free speech under the
26 United States Constitution or the California Constitution in connection
27 with a public issue shall be subject to a special motion to strike, unless
28 the court determines that the plaintiff has established that there is a
probability that the plaintiff will prevail on the claim.

1 Cal. Civ. Proc. Code § 425.16(b)(1). The statute “shall be construed broadly.” *Id.*
2 § 425.16(a); *see also Mindys Cosms., Inc. v. Dakar*, 611 F.3d 590, 596 (9th Cir. 2010)
3 (“[W]e follow the California legislature’s direction that the anti-SLAPP statute be
4 ‘construed broadly.’”).

5 A defendant can bring anti-SLAPP motions in federal court for “California state
6 law claims asserted under either diversity jurisdiction or supplemental jurisdiction.”
7 *OneLegacy v. City of Monterey Park*, No. 2:19-cv-04911-AB (JPRx), 2019 WL
8 6729723, at *2 (C.D. Cal. Aug. 21, 2019). Where a federal court has jurisdiction to
9 hear an anti-SLAPP motion, the court is bound by decisions of the California Supreme
10 Court. *See Hilton*, 599 F.3d at 905 (federal courts evaluating claims brought under
11 state law “must begin with the pronouncements of the state’s highest court, which
12 bind us”).

13 “If a defendant makes a special motion to strike based on alleged deficiencies in
14 the plaintiff’s complaint, the motion must be treated in the same manner as a motion
15 under Rule 12(b)(6) except that the attorney’s fee provision of [section] 425.16(c)
16 applies.” *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d
17 828, 834 (9th Cir. 2018). District courts are also to apply federal pleading standards,
18 including granting the plaintiff leave to amend. *See Verizon Del., Inc. v. Covad*
19 *Commc’ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) (“[G]ranted a defendant’s
20 anti-SLAPP motion to strike a plaintiff’s initial complaint without granting the
21 plaintiff leave to amend would directly collide with [Rule] 15(a)’s policy favoring
22 liberal amendment.”).

23 Under Rule 12(b)(6), a court may dismiss a complaint for lack of a cognizable
24 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
25 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To
26 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
27 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
28 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to

1 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
2 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual
3 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*,
4 556 U.S. at 678 (internal quotation marks omitted). The determination of whether a
5 complaint satisfies the plausibility standard is a “context-specific task that requires the
6 reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

7 **IV. SPECIAL MOTION TO STRIKE**

8 The Court first addresses the Special Motion to Strike pursuant to California’s
9 anti-SLAPP statute, then turns to the Motion to Dismiss.

10 Reay moves to strike the First Amended Complaint as asserted against her in its
11 entirety under California’s anti-SLAPP statute. (Mot. 2.) As a preliminary matter,
12 California’s anti-SLAPP statute “does not apply to federal law causes of action.”
13 *Hilton*, 599 F.3d at 901. Therefore, the Court applies California’s anti-SLAPP statute
14 only to the state and common law claims asserted against Reay.

15 Resolution of an anti-SLAPP motion “requires the court to engage in a two-step
16 process.” *Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002). First,
17 the defendant must make a prima facie showing that the conduct underlying the
18 plaintiff’s cause of action, or portions of the cause of action that are asserted as
19 grounds for relief, arises from the defendant’s constitutional rights of free speech or
20 petition. *Id.* Second, if the first prong is satisfied, the burden shifts to the plaintiff to
21 prove that he or she has a legally sufficient claim and to show a probability that the
22 plaintiff will prevail on the claim. *Id.*

23 **A. “Arising from” Protected Activity**

24 Reay must first make “a threshold showing that the challenged cause of action
25 is one arising from protected activity.” *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002).
26 California’s anti-SLAPP statute delineates four broad categories of conduct that
27 constitute “act[s] in furtherance of a person’s right of petition or free speech under the
28 United States or California Constitution in connection with a public issue.” Cal. Civ.

1 Proc. Code § 425.16(e). Sections 425.16(e)(3) and (4) provides that protected activity
2 under the anti-SLAPP statute includes “any written or oral statement or writing made
3 in a place open to the public or a public forum in connection with an issue of public
4 interest” and “any other conduct in furtherance of the exercise of the constitutional
5 right . . . of free speech in connection with a public issue or an issue of public
6 interest.”

7 “On the ‘arising from’ requirement, the defendant must show ‘the defendant’s
8 act underlying the plaintiff’s cause of action [was] *itself* a protected act.” *Gaynor v.*
9 *Bulen*, 19 Cal. App. 5th 864, 877 (9th Cir. 2018) (alteration and emphasis in original)
10 (internal citations omitted) (quoting *City of Cotati v. Cashman*, 29 Cal. 4th 69, 78
11 (2002)). To determine whether the first prong of the anti-SLAPP statute is satisfied,
12 “the critical consideration is whether the cause of action is *based on* the defendant’s
13 protected free speech or petitioning activity.” *Navellier*, 29 Cal. 4th at 89 (emphasis
14 in original) (citing *City of Cotati*, 29 Cal. 4th at 76–78). The Court looks beyond the
15 face of the complaint to determine whether the causes of action arise from protected
16 activities. *See Stewart v. Rolling Stone LLC*, 181 Cal. App. 4th 664, 679 (2010) (“We
17 do not evaluate the first prong of the anti-SLAPP test solely through the lens of a
18 plaintiff’s cause of action.”) “[C]ourts should consider the elements of the challenged
19 claim and what actions by the defendant supply those elements and consequently form
20 the basis for liability.” *Park v. Bd. of Tr. of Cal. State Univ.*, 2 Cal. 5th 1057, 1063
21 (2017).

22 *I. Claims at Issue*

23 Here, Alvarez asserts four state and common law causes of action against Reay,
24 for defamation, intentional infliction of emotional distress, negligence, and negligent
25 infliction of emotional distress. (FAC ¶¶ 42–49, 119–66.) These claims all arise from
26 statements that Reay made on TikTok. (*Id.* ¶¶ 27–31, 45, 136–37.) Having identified
27 the challenged causes of action and alleged activity at issue, the next inquiry is
28 whether the activity was in furtherance of Reay’s free speech rights.

2. *In Furtherance of a Right of Free Speech*

Reay argues that the statements are protected by section 425.16(e)(3), as they are statements made on TikTok, a public forum, and concern the public's interest in protecting babies from predators.³ (Mot. 11–13.) Alternatively, Reay contends that the statements fall under section 425.16(e)(4)'s "catchall" provision, as an exercise of Reay's constitutional right of free speech in connection with an issue of public concern, specifically regarding sexual offense. (*Id.* at 13.) Alvarez argues that Reay's statements did not concern a public issue because Alvarez was not, and is not now, a sexual predator. (Opp'n 6–7.)

A public forum "traditionally has been defined as a place that is open to the public where information is freely exchanged." *Nygard v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1036 (2008) (discussing section 425.16(e)(3)). TikTok, a website accessible to the public, is a public forum for purposes of the anti-SLAPP statute. *See Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006) ("Web sites accessible to the public . . . are 'public forums' for purposes of the anti-SLAPP statute."); *see also Penrose Hill, Ltd. v. Mabray*, 479 F. Supp. 3d 840, 854 (N.D. Cal. 2020) (finding Twitter to be a public forum and collecting cases finding social media platforms such as Facebook and Instagram to be public forums). Alvarez does not dispute that TikTok is a public forum. (*See generally* Opp'n.)

California courts have described three categories of statements that address issues of public interest: (1) a statement that concerns "a person or entity in the public eye"; (2) statements that "could directly affect a large number of people beyond the direct participants"; and (3) statements that involve "a topic of widespread, public interest." *Rand Res., LLC v. City of Carson*, 6 Cal. 5th 610, 621 (2019). Here, Reay

³ The Court declines to address Reay's argument that the claims are based on Reay's statements to law enforcement. (Mot. 13.) The First Amended Complaint does not include allegations that Reay made statements directly to law enforcement, (*see generally* FAC), and Alvarez concedes that the claims are not based on Reay's statements to law enforcement, (Opp'n 8). Accordingly, this argument of Reay's is inapplicable.

1 contends her statements concern the “protection of vulnerable children from sexual
2 predators.” (Mot. 12.) “[P]reventing child sexual abuse and protecting children from
3 sexual predators are issues of widespread public interest.” *Cross v. Cooper*, 197 Cal.
4 App. 4th 357, 375 (2011).

5 Alvarez argues that he was not, and is not now, a sexual predator, that he did not
6 perform sexually inappropriate acts with his foster baby nor post such content online,
7 and that there was no danger. (Opp’n 6–7.) But “[i]t need not be proved that a
8 particular adult is in actuality a sexual predator in order for the matter to be a
9 legitimate subject of discussion.” *Terry v. Davis Cmty. Church*, 131 Cal. App. 4th
10 1534, 1547 (2005). For example, in *Terry*, the plaintiff’s actions with a minor gave
11 members of the church and parents of the youth group cause for concern, leading to
12 discussions in church meetings. *Id.* at 1548. The court in *Terry* found that, even
13 though the police later concluded that there was insufficient evidence to show plaintiff
14 committed any crime, *id.* at 1547, the plaintiff’s actions still gave rise to an ongoing
15 discussion about protection of children that warranted protection by the statute, *id.*
16 at 1550. Accordingly, the court concluded the allegations arose from protected
17 activity. *Id.* at 1551.

18 Based on the allegations, Reay’s statements⁴, on their face, concerned a public
19 interest to protect vulnerable children from sexual predators. Accordingly, the Court
20 finds she satisfies her burden of showing that Alvarez’s first, sixth, seven, and eighth
21 causes of actions arise from protected activity.

22 **B. Reasonable Probability of Prevailing**

23 The burden now shifts to Alvarez to demonstrate “there is a probability that [he]
24 will prevail on the claim.” Cal. Civ. Proc. Code § 425.26(b)(1). If Alvarez fails to
25 meet this burden, the anti-SLAPP motion must be granted and the claims dismissed.
26 *Navellier*, 29 Cal. 4th at 89.

27 ⁴ The Court notes that the allegations do not specify what Reay said, verbatim, in her videos.
28 Alvarez generally alleges that Reay “vocalized her disdain,” made “commentary on the videos,” and
alleged “that she feared for the baby’s safety.” (FAC ¶¶ 27–28.)

1 Reay confines her anti-SLAPP motion to the “legal infirmities” in the First
2 Amended Complaint. Therefore, the Court applies the familiar standard of
3 Rule 12(b)(6) and considers whether the First Amended Complaint “contain[s]
4 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on
5 its face.” *CoreCivic, Inc. v. Candide Grp., LLC*, 46 F.4th 1136, 1143 (9th Cir. 2022)
6 (quoting *Iqbal*, 556 U.S. at 678).

7 Reay argues that each of the four causes of action are deficient. First, she
8 argues Alvarez’s defamation claim is deficient because (1) it is time-barred,
9 (2) Alvarez does not present a statement that is provably false, and (3) foster parenting
10 is not a business⁵ that is subject to a trade libel claim. (Mot. 14–15.) Second, she
11 contends Alvarez’s intentional infliction of emotional distress claim fails as he does
12 not allege extreme and outrageous conduct. (*Id.* at 16.) Third, Reay argues Alvarez’s
13 negligence claim is without merit as Reay does not owe a duty to him. (*Id.* at 17.)
14 Lastly, she contends Alvarez’s negligent infliction of emotional distress fails because
15 California law does not permit such a claim absent physical injury. (*Id.* at 18.) The
16 Court considers each argument in turn.

17 *1. First Cause of Action: Defamation*

18 Under California law, a defamation action for libel or slander is subject to a
19 one-year statute of limitation. Cal. Civ. Pro. Code § 340(c). A claim for defamation
20 accrues when the defendant publishes a defamatory statement by communicating it to
21 a third person who “understands its defamatory meaning as applied to the plaintiff.”
22 *Shively v. Bozanich*, 31 Cal. 4th 1230, 1242 (2003).

23
24 ⁵ Alvarez argues California Code of Civil Procedure section 425.17 “prohibits anti-SLAPP motions
25 in response to certain actions against a business.” (Opp’n 5.) Section 425.17 applies only if “the
26 statement or conduct consists of representations of fact about that person’s . . . business operations,
27 goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing
28 sales . . . or commercial transactions in, the person’s goods or services.” Cal. Civ. Proc. Code
§ 425.17(c)(1). But Alvarez does not allege, nor does it appear, that he runs a foster care “business.”
(*See generally* FAC.) Instead, Alvarez alleges he fostered the baby because it “provided an
alternative outlet to fatherhood.” (*Id.* ¶ 16.) Accordingly, the Court declines to address this
argument.

1 As noted by Reay, Alvarez does not allege the date when the alleged defamation
2 occurred. (Mot. 14; *see generally* FAC.) Rather than address this deficiency, Alvarez
3 relies on the “discovery rule,” arguing that the statute of limitation did not begin to run
4 until he discovered the defamatory statement, and conclusively asserting that he filed
5 suit within the statute of limitations. (Opp’n 8.)

6 The discovery rule may apply if Alvarez “pleads and proves that a reasonable
7 investigation at [the] time [when the statute of limitations began to run] would not
8 have revealed a factual basis for th[e] particular cause of action.” *Fox v. Ethicon*
9 *Endo-Surgery, Inc.*, 35 Cal. 4th 797, 803 (2005). But Alvarez does not plead the date
10 he made the discovery or whether he made any investigation. (*See generally* FAC;
11 Opp’n.) As asserted, the allegations do not provide the Court with sufficient facts to
12 determine when the statute of limitations began to run or when Alvarez discovered the
13 alleged defamatory statements.

14 Accordingly, the Court **GRANTS** the Motion as to Alvarez’s first cause of
15 action for defamation against Reay. Although Alvarez fails to indicate in his
16 opposition whether he can cure this deficiency, the cause of action is **STRIKEN**
17 **WITH LEAVE TO AMEND**.

18 2. *Sixth Cause of Action: Intentional Infliction of Emotional Distress*

19 To state a claim for intentional infliction of emotional distress, Alvarez must
20 allege, among other things, “extreme and outrageous conduct causing [him] to suffer
21 severe or extreme emotional distress. *The Kind & Compassionate v. City of Long*
22 *Beach*, 2 Cal. App. 5th 116, 130 (2016). “A defendant’s conduct is ‘outrageous’ when
23 it is so extreme as to exceed all bounds of that usually tolerated in a civilized
24 community.” *Hughes v. Pair*, 46 Cal. 4th 1035, 1050–51 (2009) (cleaned up).

25 Reay argues Alvarez cannot demonstrate a probability that he will prevail on
26 this claim because he does not plead facts showing extreme and outrageous conduct.
27 (Mot. 16.) Alvarez alleges that Reay reposted his videos on her TikTok account,
28 added commentary to demonize his relationship with his foster baby, and prompted

1 viewers to contact social services. (FAC ¶¶ 27–31.) Reay contends these allegations
2 do not rise to the level of extreme and outrageous conduct because she displayed
3 Alvarez’s own videos, and her commentaries discussed the safety of children.
4 (Reply 8.)

5 In his opposition, Alvarez provides no substantive response to Reay’s argument.
6 (See Opp’n 9.) Instead, he lists only the elements of a claim for intentional infliction
7 of emotional distress. (*Id.*) Alvarez thus fails to carry his burden to demonstrate that
8 he will prevail on this claim and appears to concede to this argument. See *Star*
9 *Fabrics, Inc. v. Ross Stores, Inc.*, No. 2:17-cv-05877-PA (PLAx), 2017 WL 10439691,
10 at *3 (C.D. Cal. Nov. 20, 2017) (“Where a party fails to oppose arguments made in a
11 motion, a court may find that the party has conceded those arguments or otherwise
12 consented to granting the motion.”).

13 Accordingly, the Court **GRANTS** the Motion and **STRIKES** Alvarez’s sixth
14 cause of action for intentional infliction of emotional distress against Reay, **WITH**
15 **LEAVE TO AMEND**, to permit Alvarez to cure the deficiency.

16 3. *Seventh Cause of Action: Negligence*

17 “To state a cause of action for negligence, [Alvarez] must allege (1) [Reay]
18 owed [him] a duty of care, (2) [Reay] breached that duty, and (3) the breach
19 proximately caused [Alvarez’s] damages or injuries.” *Lueras v. BAC Home Loans*
20 *Servicing, LLP*, 221 Cal. App. 4th 49, 62 (2013).

21 Reay moves to dismiss Alvarez’s negligence claim because Alvarez fails to
22 show that Reay owed Alvarez a duty and breached that duty. (Mot. 17.) In his
23 opposition, Alvarez cites to inapplicable case law describing the duty of care owed by
24 corporate officers to third parties. (Opp’n 9–10.) Alvarez further states that Reay
25 owed a duty of care not to spread defaming rumors about him. (*Id.*)

26 Alvarez’s argument is duplicative of his defamation claim and he offers no
27 authority to establish the existence of a legal duty “not to spread defaming rumors.”
28 (See generally Opp’n.) Where, as here, “a negligence claim [is] premised on [a]

1 defamation claim . . . multiple courts have rejected such negligence claims as
2 duplicative.” *Harvey v. Netflix, Inc.*, No. 2:24-cv-04744-RGK (AJRx), 2024 WL
3 4536639, at *12 (C.D. Cal. Sept. 27, 2024), *appeal filed*, No. 24-6151 (9th Cir. Oct. 9,
4 2024); *see also Jacques v. Bank of Am. Corp.*, No. 1:12-cv-0821-LJO-SAB, 2014 WL
5 7272769, at *10 (E.D. Cal. Dec. 18, 2014) (same); *Schering Corp. v. First Databank*
6 *Inc.*, No. C 07-01142 WHA, 2007 WL 1068206, at *6–7 (N.D. Cal. Apr. 10, 2007)
7 (same). California courts have expressed concerns that permitting plaintiffs to sue in
8 negligence when the facts “may be actionable as libel or slander,” would allow
9 plaintiffs “to seek to evade the structures of libel law and avoid the applicable
10 defenses by framing all libel actions as negligence causes of action.” *Felton v.*
11 *Shaeffer*, 229 Cal. App. 3d 229, 238–39 (1991).

12 Accordingly, the Court **GRANTS** the Motion and **STRIKES** Alvarez’s seventh
13 cause of action against Reay as duplicative, **WITHOUT LEAVE TO AMEND**,
14 because the Court finds Alvarez cannot plead a duty owed separate from the duty
15 imposed by the law of defamation.

16 4. *Eighth Cause of Action: Negligent Infliction of Emotional Distress*

17 Lastly, Reay moves to dismiss Alvarez’s eight cause of action for negligent
18 infliction of emotional distress on the grounds that Alvarez fails to plead he was a
19 bystander to an injury or a direct victim of a breach of duty. (Mot. 18.) Alvarez does
20 not address this argument in his opposition and thus concedes the issue. (*See*
21 *generally* Opp’n); *see also Star Fabrics*, 2017 WL 10439691, at *3.

22 Accordingly, the Court **GRANTS** the Motion and **STRIKES** Alvarez’s eighth
23 cause of action, **WITH LEAVE TO AMEND**, to permit Alvarez to cure the
24 deficiency.

25 **C. Conclusion—Special Motion to Strike**

26 As described above, Reay makes a threshold showing that the first, sixth,
27 seventh, and eighth causes of action against her arise from protected activity, and
28 Alvarez fails to show a probability of prevailing on any of the four claims.

1 Accordingly, the Court **STRIKES** Alvarez’s first, sixth, and eighth causes of action,
2 **WITH LEAVE TO AMEND**. The Court **STRIKES** Alvarez’s seventh cause of
3 action **WITHOUT LEAVE TO AMEND**.

4 **V. MOTION TO DISMISS**

5 Having stricken the first, sixth, seventh, and eighth causes of action, the Court
6 turns to the Motion to Dismiss Alvarez’s remaining two federal claims against Reay.

7 Against Reay, Alvarez asserts his third cause of action for violation of Equal
8 Protection under the Fourteenth Amendment and fourth cause of action for violation
9 of his Right to Free Speech under the First Amendment. (FAC ¶¶ 77–110.) Reay
10 moves for dismissal of these two claims on the grounds that she is not a state actor.
11 (Mot. 16.) Alvarez argues that Reay may be liable as a joint actor. (Opp’n 9.)

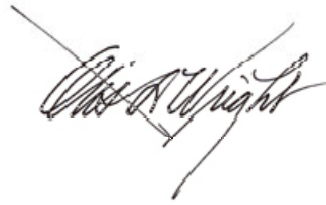
12 The Fourth Amendment’s Equal Protection Clause prohibits discriminatory
13 action by the State, but does not protect against “private conduct, ‘however
14 discriminatory or wrongful.’” *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172
15 (1972). Likewise, “[t]he Free Speech Clause of the First Amendment constrains
16 governmental actors and protects private actors.” *Manhattan Cmty. Access Corp. v.*
17 *Halleck*, 587 U.S. 802, 804 (2019). To determine whether a private individual’s action
18 amounts to state action, the Supreme Court has identified the following four tests:
19 “(1) the public function test; (2) the joint action test; (3) the state compulsion test; and
20 (4) the governmental nexus test.” *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002).

21 Alvarez contends that Reay is a state actor under the joint action test.
22 (Opp’n 9.) The joint action test is satisfied when “the state has so far insinuated itself
23 into a position of interdependence with the private entity that it must be recognized as
24 a joint participant in the challenged activity.” *Florer v. Congregation Pidyon*
25 *Shevuyim, N.A.*, 639 F.3d 916, 926 (9th Cir. 2011). “A plaintiff may demonstrate joint
26 action by proving the existence of a conspiracy or by showing that the private party
27 was ‘a willful participant in joint action with the State or its agents.’” *Franklin*,
28 312 F.2d at 445.

1 If Plaintiff chooses to amend, he must file his Second Amended Complaint by
2 no later than **fourteen (14) days** from the date of this Order, in which case Defendants
3 shall answer or otherwise respond within **fourteen (14) days** of the filing. If Plaintiff
4 does not timely amend, this dismissal shall be deemed a dismissal with prejudice as to
5 the first, sixth, and eighth causes of action against Reay, as of the lapse of the deadline
6 to amend.

7
8 **IT IS SO ORDERED.**

9
10 April 22, 2025



11
12
13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**